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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

DOCKETED

AUG 9 9 2016

DOCKETED BY

ORIGINAL

IN THE MATTER OF THE.

DOCKET NO. S-20953A-16-0061

ROBERT J. MOSS AND JENNIFER L. MOSS,
husband and wife,

THE FORTITUDE FOUNDATION, an Arizona
corporation,

VENTURES 7000, LLC, an Oklahoma limited
liability company,

JEFFREY D. McHATTON AND STARLA T.
McHATTON, husband and wife,

ROBERT D. SPROAT AND JANE DOE SPROAT,
husband and wife,

KEVIN KRAUSE, a single man, and

VERNON R. TWYMAN, JR., a single man,

Respondents

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NINTH
PROCEDURAL ORDER
(Extends Date for Exchange of
Witness Lists and Exhibits)

BY THE COMMISSION:

On February 23, 2016, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of Opportunity for Hearing ("Notice") against Robert J. Moss and Jennifer L. Moss, husband and wife, The Fortitude Foundation ("TFF"), an Arizona Corporation, Ventures 7000, LLC ("Ventures"), an Oklahoma limited liability company, Jeffrey D. McHatton and Starla T. McHatton, husband and wife, Robert D. Sproat and Jane Doe Sproat, husband and wife, Kevin Krause, a single man, and Vernon R. Twyman, Jr., a single man, (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of interests, stock and promissory notes. Respondent spouses, Jennifer L. Moss, Starla T.

1 McHatton and Jane Doe Sproat, were joined in the action solely for the purpose of determining the
2 liability of the irrespective marital communities pursuant to A.R.S. 44-2031(C).

3 On March 24, 2016, counsel for the McHatton and TFF Respondents filed a request for hearing
4 in this matter. The McHatton and TFF Respondents, with the agreement of the Division, also filed a
5 Stipulation that extended the date for the filing of their Answer to April 11, 2016.

6 On March 31, 2016, by Procedural Order, a pre-hearing conference was scheduled on April 20,
7 2016.¹

8 Additionally, on March 31, 2016, the Moss Respondents filed a request for hearing and further
9 requested 30 days to retain counsel and to file an Answer to the T.O. and Notice.²

10 On April 4, 2016, by Procedural Order, it was found that ample time would be available for the
11 Moss Respondents to retain counsel and that the pre-hearing conference could go forward on April 20,
12 2016, as previously ordered.

13 On April 6, 2016, the Division filed a response to the request for a 30 day delay by the Moss
14 Respondents. Therein, the Division noted the McHatton's and TFF were represented by attorneys who
15 had earlier indicated their representation of those parties in their request for hearing filed on March 24,
16 2016.

17 It was further noted by the Division that the Moss Respondents had been served on March 10,
18 2016, and the Division objected to the lengthy delay requested by the Moss Respondents to file their
19 Answer. Instead the Division proposed only a 10 day extension from the current due date of April 11,
20 2016 to April 21, 2016.

21 On April 8, 2016, by Procedural Order, the Moss Respondents were ordered to file their Answer
22 by April 29, 2016.

23 On April 11, 2016, the Answers of the McHatton and TFF Respondents were filed.

24 On April 20, 2016, at the initial pre-hearing conference, counsel for the Division and counsel
25 for the McHattons and TFF Respondents appeared. Neither of the Moss Respondents appeared and
26 counsel was not present on their behalf. After a brief discussion, it was learned that the Moss

27
28 ¹ As of the date of the First Procedural Order, the following Respondents had been duly served with copies of the T.O. and Notice: the Mosses; Ventures; the McHattons; TFF; and Kevin Krause.

² The Moss Respondents, in their request for a hearing, appeared to also request similar relief for TFF.

1 Respondents had inadvertently not been added to the proceeding's service list and that they did not
2 receive notice of the pre-hearing that had originally been scheduled on April 20, 2016.

3 On April 21, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May
4 18, 2016, with notice provided to all parties who had requested a hearing or their attorney of record.

5 On April 29, 2016, the Division and the McHatton and TFF Respondents filed a Joint Motion
6 to reschedule the pre-hearing conference scheduled on May 18, 2016. Counsel for the parties cited
7 conflicting matters and suggested alternate dates for the proceeding to be rescheduled on May 24th, 25th
8 or 26th, 2016.

9 Additionally, on April 28, 2016, the Moss Respondents filed their Answer.

10 On May 3, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May 25,
11 2016.

12 On May 5, 2016, counsel for the McHatton and TFF Respondents filed an Application to
13 Withdraw ("Application") as their counsel of record. Counsel indicated that the Application was being
14 made without the consent of their clients. Counsel further indicated that "conflicts" required their
15 withdrawal from the proceeding. It was also indicated that the McHatton and TFF Respondents had
16 been advised of all dates pending in the proceeding.

17 On May 6, 2016, a request for hearing was filed for Ventures by its manager, Vernon R.
18 Twyman, Jr., another named Respondent who has apparently not yet been served.

19 On May 10, 2016, the Division filed its response to counsel's Application and stated that the
20 Division did not oppose the Application.

21 On May 12, 2016, by Procedural Order, the Application by counsel for the McHatton and TFF
22 Respondents was granted.

23 On May 25, 2016, at the pre-hearing conference, the Division appeared with counsel.
24 Respondents Robert Moss, Jeffery McHatton and Starla McHatton appeared on their own behalf.
25 Several Respondents remain to be served and Respondent Krause who was served has not requested a
26 hearing. The Division indicated that would soon amend the Notice and requested that a hearing be
27 scheduled.

1 On July 1, 2016, by Procedural Order, a hearing was scheduled on September 19, 2016. As
2 indicated at the pre-hearing conference, the Division filed a Motion for Leave to File Amended
3 Temporary Order and Notice ("Motion for Leave").

4 No responses were filed to the Division's Motion for Leave.

5 On July 14, 2016, by Procedural Order, the Division's Motion for Leave was granted.

6 On July 19, 2016, the Division filed the Amended T.O. and Notice.

7 On July 21, 2016, the Moss Respondents and also on behalf of TFF filed a response to the
8 Amended T.O. and Notice requesting a hearing and a 30 day extension of time to file an Amended
9 Answer and for the exchange of the Witness Lists and Exhibits.

10 On July 26, 2016, the Division filed a response to the request for a 30 day delay by the Moss
11 Respondents to file their Amended Answer and for the exchange of Witness Lists and Exhibits. The
12 Division stated that, based on the service date of the Amended T.O. and Notice, the Moss Respondents'
13 Amended Answer is not due until August 19, 2016, and that if they were granted a 30 day extension to
14 file their Amended Answer, until September 19, 2016, that date is the date that the hearing is to
15 commence. Further, the Division argued that the Moss Respondents had not shown good cause for an
16 extension of time to file their Amended Answer and to exchange Witness Lists and Exhibits.

17 On August 2, 2016, counsel for Ventures and Respondent Twyman entered an appearance.

18 On August 4, 2016, the McHatton Respondents and also claiming representation for TFF filed
19 a response to the Amended T.O. and Notice requesting a hearing and a 15 day extension of time to file
20 an Amended Answer and for the exchange of Witness Lists and Exhibits.

21 On August 4, 2016, Respondent Kevin Krause filed a response to what appears to be the
22 Amended T.O. and Notice in the form of an Answer. Respondent Krause had previously not appeared
23 in the proceeding earlier, but this filing will be treated as a request for hearing and Answer by the
24 Respondent appearing on his own behalf.

25 On August 5, 2016, the Division filed a response which contains a Motion to Extend Date to
26 Exchange Witness Lists and Exhibits pending the outcome of a Motion to Continue Hearing which the
27 Division anticipates will be filed by counsel for Respondents Twyman and Ventures after contact
28 between counsel for the Division and counsel for Twyman and Ventures. The Division points out that

1 the date for the exchange of Witness Lists and Exhibits has passed (August 5, 2016), and is requesting
2 that the exchange be postponed until the issue is decided on the anticipated Motion for a Continuance
3 by the Twyman and Ventures Respondents so that an actual exchange can take place prior to the hearing
4 rather than the Division unilaterally providing its Witness List and Exhibits to the Respondents.

5 Under the circumstances, it is unknown when or if a Motion for a Continuance will be filed by
6 counsel for Respondents Ventures and Twyman. Therefore, an extension for the exchange of the
7 Witness Lists and Exhibits should be granted.

8 IT IS THEREFORE ORDERED that **the Division and Respondents shall exchange copies of**
9 **their Witness Lists and copies of Exhibits by August 31, 2016**, with courtesy copies provided to the
10 presiding Administrative Law Judge.

11 IT IS FURTHER ORDERED that a **hearing shall be held on September 19, 2016, at 10:00**
12 **a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,
13 Arizona, as previously ordered.

14 IT IS FURTHER ORDERED that **the parties shall also set aside September 20, 21, 22, 26,**
15 **27, 28, 29, October 4, 5, and 6, 2016, for additional days of hearing**, if necessary.

16 IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in the**
17 **Notice prior to the hearing, the Division shall file a Motion to Vacate the Proceeding.**

18 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
19 Communications) is in effect and shall remain in effect until the Commission's Decision in this matter
20 is final and non-appealable.

21 IT IS FURTHER ORDERED that all parties must comply with Rules 31, 38, 39 and 42 of the
22 Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and
23 admission *pro hac vice*.

24 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to this
25 matter may opt to receive service of all filings in this docket, including all filings by parties and all
26 Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
27 Commission's Hearing Division, via email sent to an email address provided by the party rather than
28 via U.S. Mail. **To exercise this option, a party shall:**

1. Ensure that the party has a valid and active email address to which the party has regular and reliable access (“designated email address”);
2. Complete a Consent to Email Service using the form available on the Commission’s website (www.azcc.gov) or a substantially similar format;
3. File the original and 13 copies of the Consent to Email Service with the Commission’s Docket Control, also providing service to each party to the service list;
4. Send an email, containing the party’s name and the docket number for this matter, to HearingDivisionServicebyEmail@azcc.gov from the designated email address, to allow the Hearing Division to verify the validity of the designated email address;
5. Understand and agree that service of a document on the party shall be complete upon the sending of an email containing the document to the designated email address, regardless of whether the party receives or reads the email containing the document; and
6. Understand and agree that the party will no longer receive service of filings in this matter through First Class U.S. Mail or any other form of hard-copy delivery, unless and until the party withdraws this consent through a filing made in this docket.

IT IS FURTHER ORDERED that a party’s consent to email service shall not become effective until a Procedural Order is issued approving the use of email service for the party. The Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the Hearing Division has verified receipt of an email from the party’s designated email address.

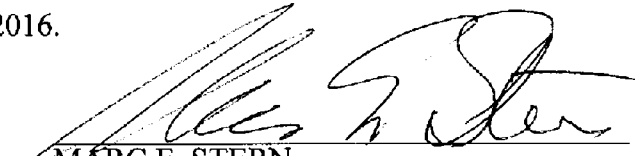
IT IS FURTHER ORDERED that a party’s election to receive service of all filings in this matter via email does not change the requirement that all filings with the Commission’s Docket Control must be made in hard copy and must include an original and 13 copies.

IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the

Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 9th day of August 2016.



MARC E. STERN

ADMINISTRATIVE LAW JUDGE

On this 9th day of August, 2016, the foregoing document was filed with Docket Control as a Procedural Order – Grants an Extension of Time, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Jeffrey D. McHatton
Starla T. McHatton
The Fortitude Foundation
P.O. Box 1983
Higley, AZ 85236


Kevin Krause
Solar Store
2833 N. Country Club Road
Tucson, AZ 85716

Robert J. Moss
Jennifer L. Moss
125 West Baylor Lane
Gilbert, Arizona 85233

Matt Neubert, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Robert D. Mitchell
Megan R. Jury
Sarah K. Deutsch
Camelback Esplanade II, Seventh Floor
TIFFANY & BOSCO PA
2525 E. Camelback Road
Phoenix, AZ 85016
Attorney for Respondents Ventures 7000, LLC
and Vernon R. Twyman, Jr.

By:



Rebecca Tallman
Assistant to Marc E. Stern